

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 December 2008

CASE NO.: 2008-LCA-00034

In the Matter of

**ADMINISTRATOR,
WAGE AND HOUR DIVISION,**
Prosecuting Party

v.

SOFTLINE SYSTEMS, INC.
Respondent

**DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT AND CONSENT FINDINGS**

This matter arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 USC §§ 1101(a)(H)(1)(b), 1184(i)(1) (“the INA”), and 20 C.F.R. Part 655. The Prosecuting Party determined that the Respondent failed to pay wages at the required wage rate, failed to provide notice of the filing of the Labor Condition Application, failed to make the required displacement inquiry of a secondary employee and failed to otherwise comply with the regulations. 20 C.F.R. §§ 655.731(c), 655.805(a)(5), 655.734, 655.738, 655.805(a)(8), 655.805(a)(16). Jurisdiction over the hearing in this matter is vested in the U.S. Department of Labor Office of Administrative Law Judges by INA § 212(n)(2) and 20 CFR § 655.820-840. On July 8, 2008, the Respondent filed a request for hearing on the Administrator’s findings of violations pursuant to 20 C.F.R. § 655.820.

The parties subsequently entered into negotiations designed to resolve this matter amicably. On December 16, 2008, the parties filed a Settlement Agreement and Consent Findings signed by all parties agreeing to settle this litigation in exchange for certain mutual agreements. (Settlement Agreement and Consent Findings is attached, incorporated hereto and marked as “ALJ 1). The Settlement Agreement and Consent Findings seek to resolve all claims existing as a result of the Prosecuting Party’s investigation. The parties reached mutual agreements as follows:

1. Softline agrees that it owes \$245,000.00 in back wages under the Act and that it is required to pay these back wages.
2. Respondent has agreed to pay back wages in the amount of \$245,000.00 to the employees listed on the Summary of Backwages attached to the Settlement Agreement and Consent Findings (Exhibit A). The Administrator and Respondent have agreed that due to the current financial condition of the Respondent, the size of the company, the size of the back wage

amount and in the interest of enabling Respondent to continue in business while repaying its debt, the back wages shall be paid in installments over a period of five years. The parties have agreed to a repayment schedule that requires Respondent to pay \$5000.00 when it signed the settlement agreement. The remaining \$240,000.00 in back wages are to be transmitted to the Administrator in a total of sixty (60) installments: twelve (12) installments of \$2,000.00 each; followed by twenty-four (24) installments of \$3,000.00 each, followed by twenty-four (24) installments of \$6,000.00 each. Each payment is to be post-marked to the Administrator before the last day of each month beginning in January 2009. Interest shall accrue on the outstanding balance at a rate of 3% per annum from the date of entry of the Settlement Agreement and Consent Findings through the date of final payment. If the Respondent fails to mail any amount due on or before the date it is due, or fails to communicate with the Department of Labor's Office of the Solicitor to make alternate arrangements for that month, as provided in paragraph 4d of the Settlement Agreement and Consent Findings, the entire balance shall immediately come due. Nothing herein shall prevent Respondent from paying the back wages owed sooner than provided in this paragraph.

3. The back wages are to be paid by certified or bank check or money order made payable to Wage and Hour Division – Labor and sent to United States Department of Labor, Wage & Hour Division, John F. Kennedy Federal Building, Room 525, Boston, MA 02203. The Administrator will distribute the checks to the employees on the Summary of Backwages attached to the Settlement Agreement and Consent Findings.

4. Paragraph 4d of the Settlement Agreement and Consent Findings gives the Respondent a 30 day grace period from the date each payment is due to contact the Solicitor's Office to make alternate payment arrangements for that month. Failure to comply with this provision will result in default of the agreement and the outstanding balance will become immediately due.

5. The Administrator agrees to withdraw the request for civil money penalties and debarment.

6. Respondent agrees to comply with the Act and applicable regulations in connection with any future H-1B applications.

7. The Settlement Agreement and Consent Findings and this Order disposing of the proceeding shall have the same force and effect as an order made after a full hearing.

8. The entire record forming the basis on which this Order is entered shall consist of the Administrator's Determination, Respondent's request for hearing, and the Settlement Agreement and Consent Findings.

9. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of the Settlement Agreement and Consent Findings and this Order, is retained by the U. S. Department of Labor Office of Administrative Law Judges.

10. Enforcement proceedings for violation of the Settlement Agreement and Consent Findings and this Order may be initiated at any time upon filing with the Administrative Law

Judge a motion for an order of enforcement and sanctions.

11. The parties waive any further procedural steps before the administrative law judge and waive any right to challenge or contest the validity of the Settlement Agreement and Consent Findings or any Order entered in accordance with the agreement.

12. Each party will bear its own cost, attorney's fees and expenses.

Pursuant to 20 C.F.R. § 655.825 and 29 C.F.R. § 18.9(d), in reviewing the parties' Settlement Agreement and Consent Findings I must issue a decision based upon the agreed findings if, I am "satisfied with [the Agreement's] form and substance." After careful consideration of the Administrator's findings and the parties' Settlement Agreement and Consent Findings, I had some concerns regarding the "substance" of the Settlement Agreement and Consent Findings. To address the concerns, I held a telephone status call with the parties on December 18, 2009. The parties' represented that the agreement was reached after disclosure of the Respondent's financial condition and with the intent of maximizing the likelihood of recovery of the back wages owed the employees. Therefore, the Settlement Agreement and Consent Findings appear to be fair and reasonable.

Accordingly, because the Settlement Agreement and Consent Findings is fair and reasonable it is APPROVED and it is ORDERED that:

- (1) The Settlement Agreement and Consent Findings submitted by the parties which is attached hereto is adopted and made a part of the Decision and Order of the Court;
- (2) The parties shall comply with each and every term contained in the Settlement Agreement and Consent Findings; and
- (3) The Settlement Agreement and Consent Findings and this Order shall comprise my findings of fact and conclusions of law and shall constitute the full, final, and complete adjudication of this proceeding.

SO ORDERED.

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COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts